IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CLAIMANTS FOR BENEFITS UNDER THE MICHIGAN UNEMPLOYMENT COMPENSATION ACT,
Petitioners,
vs.
CHRYSLER CORPORATION, a Delaware Corporation,
and
THE APPEAL BOARD OF THE MICHIGAN UNEMPLOYMENT COMPENSATION COMMISSION, et al.,
Respondents

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

OPINION OF THE MICHIGAN SUPREME COURT

The Opinion of the Michigan Supreme Court in the above cause is reported under the style of *Chrysler Corporation v. Unemployment Compensation Commission* in the following official reports:

301 Mich. 351.
3 N. W., 2d. 302.

II.

STATEMENT OF JURISDICTION

This is set forth in Petition for Certiorari, page 5.

III.

STATEMENT OF THE CASE

This is set forth in the Petition for Certiorari, pages 1-4.

IV.

ERRORS INTENDED TO BE URGED

1. The Michigan Supreme Court erred in holding that Section 34 of the Michigan Unemployment Compensation Act deprived the Chrysler Corporation of property without due process of law in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

2. The Michigan Supreme Court erred in holding that payment of unemployment compensation benefits by the State of Michigan from its Unemployment Compensation Fund deprived Chrysler Corporation of *property* within the meaning of the Fourteenth Amendment to the United States Constitution.

3. The Michigan Supreme Court erred in holding that due process under the Fourteenth Amendment to the United States Constitution requires that Chrysler Corporation be afforded a judicial review of the right of petitioners to unemployment compensation benefits and that the requirements of due process were not met by the administrative procedure.

V.

ARGUMENT

1. Due process of law does not require either a judicial determination or judicial review. The requirements of due process may be met by proceedings before administrative tribunals.

Section 34 of the Michigan Unemployment Compensation Act commonly known as the "double affirmation clause provides in part:

> "That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid."

Notwithstanding that the Michigan Supreme Court reversed the findings of fact of the appeal board of the Michigan Unemployment Compensation Commission upon which the allowance of benefits to petitioners was based petitioners were entitled under Sec. 34 of the Act *(supra)* to be paid the benefits which had been allowed them by the redetermination of the Michigan Unemployment Compensation Commission on July 26, 1940 (R. 121) the Referee of the Michigan Unemployment Compensation Commission on October 7, 1940 (R. 140) and the Appeal Board of the Michigan Unemployment Compensation Commission on February 14, 1941 (R. 165-6)

Provision for payment of benefits to claimants upon double affirmation similar to that in the Michigan Unemployment Compensation Act was incorporated in the Unemployment Compensation Acts of thirty-six states. The

meaning and purpose of such provision is clear. It constitutes a direction to the Commission to pay benefits to an unemployed worker whose claim is allowed by the Commission and affirmed on appeal by the Referee, or whose claim is first allowed by the Referee and then affirmed on appeal by the Appeal Board. The purpose of this "double affirmation" provision is to provide an expeditious method of paying benefits to unemployed workers without the delays attendant upon extended appeals. *It is clear that the Legislature in adopting the "double affirmation" provision adopted the view that to delay payment until the appeal procedure had been exhausted, after two agencies set up by the act had successively allowed a claim, would permit of circumvention of the essential purpose of the act, i. e., to provide unemployment benefits at the approximate period of unemployment when the necessity of the worker was greatest.*

The only decision other than the case at bar yet rendered by a court of final resort on this subject is the case of *Abelleira v. District Court of California, et al.*, 109 Pac. (2d) 942, 17 Cal. (2d) 280. The California Supreme Court held valid the "double affirmation" clause in the California Unemployment Compensation Act. It discussed the purpose and construction of the "double affirmation" clause in the following language reported in 109 Pac. 2d. at page 952:

> "* * * this is one of the most significant statements in the Act. In substance it provides that when the initial determination has been reviewed and approved by the intermediate appellate authority (the Referee), no further delay in *payment* shall be permitted even though the issues may be still further considered in a subsequent appeal. It

was designed to carry out the policy declared in Section 1 of alleviating the evils of unemployment, as part of a national plan of social security in which federal and state legislation is coupled. Section 2. The very essence of the act is its provision for the prompt payment of benefits to those unemployed. See 88 Univ. Pa. L. Rev. 137, 139. Any substantial delay would defeat this purpose and would bring back the very evil sought to be avoided. *The legislature recognizing the importance on the one hand of avoiding improvident payments without due consideration of the right thereto, and the danger on the other hand of withholding the payments for long periods through the slow processes of appeal to the Commission and perhaps eventually to the courts, took a middle course.* It provided for a preliminary appeal or review of the first determination where payments were ordered. This appeal, ordinarily decided in a short period of time, carries with it a stay. But when this second decision has also been made in favor of the applicants, the benefits begin, with protection, as already noted, for the employer in the event of later reversal." (Italics ours.)

It was, of course, contemplated by the Michigan Legislature that by application of the "double affirmation" provision unemployed workers would in some cases receive benefits to which the Appeal Board or the courts might later determine they were not entitled. However, the Legislature undoubtedly weighed the occasional errors which might result from the improper payment against the injustice to all workers and the community which would result from delays in making payments, and after weighing these conflicting considerations, "concluded that it is wiser to have a system of unemployment compensation operating with a possible small percentage of error,

than to have a system not operating at all." (*Abelleira v. District Court of California, supra.)*

All of the requirements of "due process, such as notice, hearing before an impartial tribunal, opportunity to present witnesses, etc. were satisfied in the hearings before the Michigan Unemployment Compensation Commission, the Referee of the Michigan Unemployment Compensation Commission and the Appeal Board of the Michigan Unemployment Compensation Commission in the case at bar. Two thousand (2000) pages of testimony were taken. It has never been claimed by Chrysler Corporation nor did the Michigan Supreme Court hold that due process was denied Chrysler Corporation in any respect except that payment upon double affirmation would deprive Chrysler Corporation of the right to judicial review. We submit that due process of law may be afforded administratively as well as judicially; that judicial review is not an essential element of due process.

The case of *Weimer v. Bunbury,* 30 Mich. 201 cited by the Michigan Supreme Court in support of the proposition that judicial review is essential to due process holds exactly to the contrary. The opinion written by Justice Cooley is well summarized so far as it relates to due process in the fourth syllabus in the Michigan reports as follows:

> "*Due process of law: judicial process: administrative process.* Due process of law is not necessarily judicial process; much of the process by means of which the government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law as is judicial process."

In the case of *Reetz v. Michigan,* which was appealed from the Michigan Supreme Court to the United States

Supreme Court and reported in 188 U. S. 505, there was involved the constitutionality of a statute regulating the licensing and registration of physicians and the procedural requirements established under the statute. In discussing the question of "due process" the United States Supreme Court stated page 507:

> Page 507: "It is objected in the present case that the board of registration is given authority to exercise judicial powers without any appeal from its decision, inasmuch as it may refuse a certificate of registration. * * * Indeed, it not infrequently happens that a full discharge of their duties compels boards, or officers of a purely ministerial character, to consider and determine questions of a legal nature. *Due process is not necessarily judicial process.*"
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> Page 508: "It follows that any legal proceedings enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law.
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> "*Neither is the right of appeal essential to due process of law.* In nearly every State are statutes giving, in criminal cases of a minor nature, a single trial, without any right of review. For nearly a century trials under the Federal practice for even the gravest offenses ended in the trial court, except in cases where two judges were present and certified a question of law to this court. In civil cases a common rule is that the amount in controversy limits the entire litigation to one court, yet there was never any serious question that in these cases due process of law was granted. * * *"

In the case of *Ohio v. Akron Park District,* 281 U. S. 74, the court had under consideration the constitutionality of an Ohio statute empowering the probate judge of any city in Ohio, on petition and after due notice and hearing, to establish a park district and to appoint a Board of Park Administrators for the Park District with power to acquire land, issue bonds and levy taxes. Chief Justice Hughes, in answering the objection that this statute violated the "due process" clause of the Fourteenth Amendment, stated:

> Page 80: "As to the due process clause of the 14th Amendment, it is sufficient to say that as frequently determined by this Court *the right of an appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance.*"

In the case of *Stettler v. O'Hara,* 69 Or. 519, 139 Pac. 743, affirmed 243 U. S. 629, the court held valid a statute making final the finding of fact of an administrative commission in the following language reported in 139 Pac. at page 750:

> "Due process of law merely requires such tribunals as are proper to deal with the subject in hand. Reasonable notice and a fair opportunity to be heard before some tribunal before it decides the issues are the essentials of due process of law."

We quote briefly from several other cases, all of which held that the legislature may provide that hearing of administrative tribunals shall be final and conclusive without judicial review.

> *Nulter v. State Road Commission of West Virginia,* 119 W. V. 312, 193 S. E. 549.

(At page 551) "Due process of law may be afforded administratively as well as judicially. Lawful administrative process is due process equally as much as lawful judicial process."

Beck v. Missouri Valley Drainage Dist., 46 F. (2) 632, (Cert. denied 284 U. S. 618).

(At page 638) "* * * the right of appeal is not essential to due process of law. The right of review is statutory, and the Legislature may provide that a hearing before an administrative tribunal shall be final and conclusive. * * *"

Ross v. Board of Sup'r., 128 Iowa 427, 104 N. W. 506.

(At page 510) "The right to an appeal from one court or tribunal to another has never been held to be in itself a denial of due process of law. The power to make a final determination beyond which there is no appeal must rest somewhere, and in the absence of express or clearly implied constitutional limitations upon its authority in this respect the Legislature may confide that power in any given proceeding to any court, board or commission."

Whatever rights Chrysler Corporation may have in the Unemployment Compensation Fund of the State of Michigan the "double affirmation" clause could not deprive it of due process of law. The Michigan Legislature may constitutionally provide for payment of unemployment compensation benefits from the public funds of the state after such claims have been twice allowed by administrative agencies so that unemployed workers may obtain and receive the funds in their time of need thereby effectuating the public policy of such legislation.

Judicial proceedings or judicial review is not an essential element of due process within the meaning of the Fourteenth Amendment to the United States Constitution.

2. Payment of benefits to petitioners from the Michigan Unemployment Compensation Fund does not deprive Chrysler Corporation of PROPERTY within the meaning of the Fourteenth Amendment to the United States Constitution.

The Michigan Unemployment Compensation Fund is a fund held in the treasury of the United States to the credit of the State of Michigan (Section 26 of the Act). Chrysler Corporation has no proprietary interest therein. Chrysler Corporation has no such direct interest in the fund as to constitute property. Even if judicial review were essential to "due process," which we deny, it cannot be said that Chrysler Corporation is denied its property under Section 34 of the Act.

The Michigan Unemployment Compensation Fund is provided by taxation of employers subject to the Michigan Unemployment Compensation Act. The Act levys a tax on payrolls equal for all employers subject to the Act in the amount of 2% for the year 1937 and 3% thereafter until January 1, 1942 (Section 13). It further provides in Section 17 that an experience record should be kept of the contributions of each employer to the fund and of benefits paid which are charged to the experience record of such employer, and that commencing January 1, 1942, each employer's contribution or tax rate should be based upon his experience record in accordance with a table set forth therein.

Whatever may be the nature in law of the interest of the Chrysler Corporation in its experience record clearly it is not affected by the "double affirmation" clause. Section 34 of the Michigan Unemployment Compensation Act specifically provides:

> "* * * but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid."

If claimants in the case at bar are paid the benefits to which they are entitled under the "double affirmation" clause it will not be charged to Chrysler Corporation's experience record but will be paid out of the general State Unemployment Compensation Fund.

Even if the administrative procedure heretofore discussed were not "due process," all rights of Chrysler Corporation are fully protected by the right to appeal to the Circuit Court and to the Michigan Supreme Court.

The Act formerly provided for a further possible variation of one-tenth per cent (1/10%) in the tax rate to commence as of January 1, 1942. That is, if the general state experience record was less than 2% the tax rate would be decreased one-tenth per cent (1/10%); if it were more than two and one-half (2½%) it would be increased one-tenth per cent (1/10%). The possible effect that payment of benefits upon "double affirmation" might have upon the general state experience record and thereby upon the future tax rate of Chrysler Corporation was so remote, contingent and speculative, that it could not be held to be a property right.

This is most clearly demonstrated by the fact that Section 19 of the Act has been amended (Michigan Public Acts 1941, No. 364, pp. 651-679) and the provision that the state experience record should affect the tax rate has been repealed (p. 661). Since the provision was not scheduled originally to take effect until 1942, the state experience record has never affected the tax rate.

While we recognize that repeal or passage of subsequent legislation could not affect the validity of a statute

in force at a prior date, the repeal of this provision is a graphic illustration of our argument that the possible effect of payment by the state from public funds upon the subsequent tax rate of Chrysler Corporation is not a direct, vested, property interest. If the contention of Chrysler Corporation were sound every expenditure by the government from the public funds would constitute a deprivation of the property of every taxpayer.

The Michigan Supreme Court recognized in its opinion in the case at bar that the only right of Chrysler Corporation is that of an ordinary taxpayer. It stated, 301 Mich. page 356:

> "* * * That the Chrysler Corporation has a property right in the unemployment compensation fund and in its just administration was also passed upon by Mr. Justice Wiest's opinion in *Chrysler Corp. v. Smith, supra,* 453.
>
> "In respect of his right and duty to have only lawful use made of the unemployment fund, the assessed employer is in substantially the same position as the ordinary taxpayer relative to public moneys acquired by taxation being used for lawful purposes only."

We submit that the interest of a general taxpayer in the public funds of the state is not a property interest within the meaning of the Fourteenth Amendment to the United States Constitution.

The decisions of the courts recognize that for one to claim that his property is denied him without due process of law in violation of the Fourteenth Amendment to the United States Constitution, one must show a direct, substantial, present interest in that which he claims to be denied him.

In *Massachusetts v. Mellon,* 262 U. S. 447, a bill was filed to restrain the Secretary of the Treasury of the United States from making payments to the several states under the so-called Maternity Act. The purpose of the Act was to obtain the cooperation of the States to reduce maternal infant mortality and protect the health of mothers and infants. The Act created a bureau to administer the Act and to pass upon the payments to be made to the various States. The question was raised in the case whether the plaintiffs had such an interest as would permit them to file the bill. On this point the court stated on page 488:

> "We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. * * * *The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.*" (Italics ours.)

In the recent case of *Perkins v. Lukens Steel Co.,* 310 U. S. 113, it was held that the respondent steel companies had no standing to enjoin Federal officials from requiring as a condition for public contracts that minimum wages be paid in accordance with the administrative construction of the word "locality" in the Public Contracts Act. The court said on page 125:

> "We are of opinion that *no legal rights of respondent were shown to have been invaded or threatened*

> in the complaint upon which the injunction of the Court of Appeals was based. It is by now clear that *neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitutional legislation recognizing it as such* (citing *Tennessee Electric Power Co. v. Tennesseee Valley Authority,* 306 U. S. 118, 137-8; *Alabama Power Co. v. Ickes,* 302 U. S. 464; *Massachusetts v. Mellon,* 262 U. S. 447). It is not enough that the Secretary of Labor is charged with an erroneous interpretation of the term 'locality' as an element in her wage determination. Nor can respondents vindicate any general interest which the public may have in the construction of the Act by the Secretary and which must be left to the political process. *Respondents, to have standing in Court, must show an injury or threat to a particular right of their own, as distinguished from the public's interest in the administration of the law.* * * *" (Emphasis ours.)

An analogous situation arose in the case of *Crockett v. State Insurance Fund,* 170 App. Div. 122, 155 N. Y. Supp. 692, where an employer appealed to the courts from a decision of the Workmen's Compensation Commission awarding benefits to one of his employees. The court refused jurisdiction upon the ground that the employer, insured under the state fund, had no interest which entitled him to sue. In discussing this aspect of the case the court said page 693:

> "It is true that the employer has a remote interest, even though insured in the state fund, to the end that the risk which he claims not to be within the act may be so decided as affecting any subsequent premiums which he must pay. That interest, however, is too remote an interest to authorize his appeal in a matter where he is not otherwise aggrieved."

In the case of *Abelleira, et al. v. District Court of Appeal, et al.,* 109 Pac. (2d) 942, 17 Cal 2d. 280, the court in discussing the "double affirmation" clause of the Unemployment Compensation Act of the State of California similar to that in the Michigan Unemployment Compensation Act stated at page 951:

> "What injury do the employers show? They say that they will suffer in the event unauthorized payments are made to unemployed workers, because their accounts will be charged with such payments, and their reserve under section 39 of the act will be thereby decreased, with the ultimate result that they may in 1941 pay contributions at an increased rate. In examining this contention, we must remember just what the employers are trying to do. They are attempting to prevent payment of public funds in which they have no direct interest, by a body specially charged with the duty of making such payment. We held in the *Bodinson Mfg. Co.* case *(supra)* that they are aggrieved parties entitled to demand judicial review. But the question is not whether they are aggrieved to the extent necessary to gain standing on appeal or review. The question is whether the payment of benefits at this time constitutes such an immediate and irreparable injury as to warrant the drastic step of interfering with an uncompleted administrative proceeding, in defiance of an established rule of jurisdiction."

That only "direct interests" are protected by the due process clause of the Fourteenth Amendment to the United States Constitution also set forth in the following cases:

> *Norman v. Baltimore & Ohio Railroad Co.,* 294 U. S. 240.
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> (Page 305) "That provision [due process] referred only to a direct appropriation." (Citing *Knox v. Lee,* 12 Wall 457).

Union Bridge Co. v. United States, 204 U. S. 364.

(Page 399) "Unless there be a taking, within the meaning of the Constitution, no obligation arises upon the United States to make compensation for the cost to be incurred in making such alterations."

Legal Tender Cases, 12 Wall. 457.

(Page 459) "Nor can it be truly asserted that Congress may not by its action indirectly impair the obligation of contracts. * * *"

To recapitulate: although Chrysler Corporation by the very terms of the Unemployment Compensation Act is a proper party to proceedings before the administrative tribunals and the Courts to contest claims for benefits within the scope and provisions of the Act, it cannot claim that payment of benefits after "double affirmation" in accordance with the law which directs payment after such "double affirmation" deprives it of property. The interest of the Chrysler Corporation in the Michigan Unemployment Compensation Fund is merely that of a general taxpayer. It is remote, contingent and speculative. It is not "property" within the meaning of the due process clause of the United States Constitution.

3. Conclusion

Petitioners' claims for benefits were allowed by the redetermination of the Michigan Unemployment Compensation Commission on July 26, 1940. They were affirmed by the Referee of the Michigan Unemployment Compensation Commission on October 7, 1940, and again affirmed by the Appeal Board of the Michigan Unemployment Compensation Commission on February 14, 1941. Petitioners thereby became entitled to unemployment compensation benefits in accordance with the provisions of Sec. 34 of the Michigan Unemployment Compensation Act.

The Michigan Supreme Court denied payment of such benefits on the ground that the "double affirmation" provision of the Michigan Unemployment Compensation Act violated the due process clause of the Fourteenth Amendment to the United States Constitution, depriving Chrysler Corporation of property without due process of law.

We submit that such provision did not deprive Chrysler Corporation of property without due process of law for two reasons:

1. The administrative procedure did constitute due process of law. Judicial review is not an essential element thereof.

2. Interest of Chrysler Corporation in the Michigan Unemployment Compensation Fund is not such a direct interest as to constitute "property" within the meaning of the Fourteenth Amendment to the United States Constitution.

We respectfully pray that the petition for Writ of Certiorari to the Supreme Court of the State of Michigan be granted.

Respectfully submitted,

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